

# Exhibit EEEE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

AARON BOOTH, et al., )  
Plaintiff, )  
 ) Civil Action  
vs. ) No. 3:18-CV-00104  
 )  
GALVESTON COUNTY, TEXAS, et al )  
Defendants )

ORAL DEPOSITION

ALEXANDER BUNIN

MARCH 19, 2019

VOLUME 1

ORAL DEPOSITION OF ALEXANDER BUNIN, produced as a witness at the instance of the Defendant and duly sworn, was taken in the above-styled and numbered cause on March 19, 2019, from 9:47 a.m. to 11:40 a.m., before Jill M. Vaughan, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Office of the Attorney General 808 Travis, Suite 1520, Houston, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

## APPEARANCES

## FOR THE PLAINTIFF:

Mr. Josh McCollum  
ARNOLD & PORTER  
700 Louisiana Street  
Suite 400  
Houston, Texas  
josh.mccollum@arnoldporter.com

FOR THE DEFENDANTS DARRING, ELLISOR, COX, GRADY,  
NEVES, AND SLAUGHTER:

Ms. Dominique Stafford  
OFFICE OF ATTORNEY GENERAL  
Civil Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, TX 78711  
512-463-2080  
dominique.stafford@oag.texas.gov

FOR THE DEFENDANTS GALVESTON COUNTY  
DISTRICT ATTORNEY-JACK ROADY (Telephonically):

Ms. Angela Olalde  
GREER, HERZ & ADAMS, L.L.P.  
2525 South Shore Blvd.  
Suite 203  
League City, TX 77573  
409-797-3262  
aolalde@greerherz.com

1	INDEX	PAGE
2	Appearances .....	2
3	ALEXANDER BUNIN	
4	Examination by Ms. Stafford .....	4
	Examination by Ms. Olalde .....	66
5	Signature and changes .....	69
	Reporter's Certificate .....	71

7	EXHIBIT INDEX	
8	NO.          DESCRIPTION	PAGE
9	EXHIBIT 1 Declaration .....	40
10	EXHIBIT 2 Declaration .....	46

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 ALEX BUNIN

2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. STAFFORD:

5 Q. Good morning, Mr. Bunin. My name is  
6 Dominique Stafford. I'm with the Attorney General's  
7 office. And I represent the district judges in this  
8 case, Booth vs. Galveston County. Do you understand  
9 that?

10 A. I do.

11 Q. And I assume you're an attorney, you've been  
12 deposed before?

13 A. I have.

14 Q. And can you state your name for the record,  
15 please?

16 A. My name is Alexander, A-l-e-x-a-n-d-e-r,  
17 Bunin, B-u-n-i-n. Most people call me Alex.

18 Q. And how are you employed?

19 A. I'm the chief public defender for Harris  
20 County, Texas.

21 Q. And how long have you been the chief public  
22 defender?

23 A. Since the office was created in --  
24 December 6 of 2010.

25 Q. So about eight years?

1 A. Close -- close to nine now, yeah.

2 Q. And I understand you provided a declaration  
3 in the case O'Donnell vs. Harris County. Did you give  
4 depositions in that case as well?

5 A. I did.

6 Q. Did you testify at the injunction hearing?

7 A. I did not.

8 Q. How did you get involved in this case?

9 A. I was contacted by a lawyer at the Houston  
10 ACLU and asked if I would be willing to give a  
11 declaration.

12 Q. And who was that lawyer?

13 A. Trisha Trigilio, if that is how you say her  
14 name.

15 Q. It's Trigilio?

16 A. Yeah.

17 Q. Something like that?

18 A. Yeah.

19 Q. Did she tell you how she got your  
20 information?

21 A. I've spoken to her before about other issues  
22 in Houston involving the ACLU. So I knew her and her  
23 name. I don't think we ever met in person, but we  
24 talked over the phone over the last eight years a few  
25 times.

1 Q. Okay. And how did you guys communicate?

2 A. By phone and email.

3 Q. Email. Okay. Do you ever send her any  
4 drafts of your declaration?

5 A. Yes.

6 Q. And do you do that by email?

7 A. Yes.

8 Q. Can we get a copy of those drafts?

9 A. Yeah. I may still have them.

10 MS. STAFFORD: I want to get a copy of that  
11 communication.

12 MR. MCCOLLUM: I'm going to object on the  
13 grounds of privileged. Our position is this is work  
14 product.

15 MS. STAFFORD: Okay.

16 MR. MCCOLLUM: I think we coordinated that  
17 pretty clear in its October 10th order that  
18 communications with third-party witnesses is work  
19 product.

20 MS. STAFFORD: Okay. I'll note your  
21 objections. I think we're still going to ask for that  
22 and we may have go to the court for that information.

23 Q. (By Ms. Stafford) Just keep it.

24 A. I think I still -- I mean, I think I still  
25 have it, but yeah.

1           **Q.    Have you given trial testimony in any other**  
2 **cases as it relates to your declaration or similar**  
3 **declarations?**

4           A.    Nothing regarding bail lawsuits, no.

5           **Q.    And in your work as a public defender before**  
6 **Harris County, do you ever represent a client on**  
7 **initial bail hearings?**

8           A.    Yes.

9           **Q.    Which ones?**

10          A.    I was the Federal public defender for  
11 20-something years and I practiced in probably at  
12 least half a dozen or more different districts across  
13 the country and all of them have what we call  
14 detention hearings and initial appearances where a  
15 Federal magistrate judge decides whether or not to  
16 release someone.

17          **Q.    What about county level?**

18          A.    My first -- when I first became a lawyer  
19 here in Houston in Harris County, I represented people  
20 at bail -- well, not initial bail hearings but --

21          **Q.    Yeah. My question is specific to initial**  
22 **bail hearings.**

23          A.    Yes. Right. So in Texas I don't think I  
24 ever appeared at someone's initial appearance.

25          **Q.    What about outside of Texas?**



1 A. Texas is the only --

2 **Q. County level?**

3 A. Yeah. Texas is the only place I've ever  
4 practiced in state court.

5 **Q. Okay.**

6 A. The others were all Federal courts.

7 **Q. And when did you first start representing**  
8 **clients at initial bail hearings in Harris County?**

9 A. That would have been in -- I'm going to say  
10 the last couple days of July 2017. I don't remember.  
11 It might have been the 30th.

12 **Q. And how did that all come about?**

13 A. So I had been seeking a procedure to  
14 represent people at bail hearings since I first came  
15 to Harris County because of my experience in the  
16 Federal courts. I had asked the judges in Harris  
17 County to consider such a procedure and -- for, you  
18 know, basically eight years or seven years at that  
19 point. And this -- I mentioned it again to the  
20 lawyers representing the judges in Harris County and  
21 the hearing officers. And I recall one of the -- one  
22 of them -- I think it was one of the lawyers at  
23 Gardere Wynne said, well, that would be a great idea.  
24 And it was presented through our county attorney to  
25 commissioners court and they asked me to come up with

1 a proposal and figure out what it would cost and I  
2 worked with the budget office and it was implemented.

3 **Q. And what was the proposal cost of it?**

4 A. Ultimately they added a million dollars to  
5 my budget.

6 **Q. How many attorneys did you hire with that**  
7 **1 million-dollar budget?**

8 A. We added six lawyers specifically for that,  
9 but we also understood that lawyers already employed  
10 would be doing overtime to -- to also -- because six  
11 lawyers doesn't cover 24 hours, seven days a week for  
12 an entire year.

13 **Q. And you said you had mentioned to the judges**  
14 **in Harris County. What judges did you speak to when**  
15 **the --**

16 A. Well, judges would have meetings at least  
17 annually; and so I would be invited to give an update  
18 on my office or talk about issues. And I would meet  
19 with all of the criminal district judges of which we  
20 have 22, all the misdemeanor county judges of which  
21 we -- I think we began with 15. We now have 16.

22 **Q. So you're saying it was for the district**  
23 **judges and the county judges?**

24 A. Separate meetings, but these were issues I  
25 brought up on a regular basis.

1           **Q.     For both of them. And O'Donnell, isn't --**  
2           **is it just the county judges that are in that lawsuit?**

3           A.     Right. Well, there's two separate lawsuits.  
4     There's now a lawsuit involving the felony district  
5     judges, but to date the only involvement I've had was  
6     in the suit against the county judges and the hearing  
7     officers.

8           **Q.     Now, were the felony district judges**  
9           **involved at all in the implementation of your plan?**

10          A.     They were. It was a joint administrative  
11     order.

12          **Q.     And what was their involvement?**

13          A.     They agreed that I would -- me, meaning me  
14     and my office, would be allowed to represent  
15     defendants at their first appearance with their  
16     consent and that representation would be available to  
17     anyone arrested in Harris County charged with an A or  
18     B misdemeanor or any level of felony and it would  
19     terminate upon the end of the hearing, the bail  
20     hearing.

21          **Q.     Did they put any sort of restrictions other**  
22          **than limited to the hearings on any of these?**

23                 MR. MCCOLLUM: Objection, form.

24                 THE WITNESS: Excuse me?

25                 MR. MCCOLLUM: Objection, form.

1 A. There was a limitation that has since been  
2 rescinded by the county judges that we were not  
3 supposed to argue issues about probable cause.  
4 They've now changed that. So our representation is  
5 not limited in any way in those cases.

6 **Q. (By Ms. Stafford) When did they change**  
7 **that?**

8 A. It's recent. They've just amended their  
9 rules. I don't know the exact date, but they've --  
10 whenever their last amendment to their rules were.

11 **Q. Was it this year or last year?**

12 A. I believe it was this year.

13 **Q. Okay. So this system, you said, has been**  
14 **going on since July of 2017; is that correct?**

15 A. Correct.

16 **Q. So you think it might have been in 2019?**

17 A. That that changed, yes --

18 **Q. Okay.**

19 A. -- I believe that's true.

20 **Q. Okay. What else did you do with that**  
21 **1 million-dollar budget?**

22 A. So it went to -- it -- primarily it went to  
23 staffing the lawyers, it went to paying for full-time  
24 lawyers and also we replicated what the district  
25 attorney's office did in staffing those hearings. So

1 for many years district attorneys -- and one time it  
2 was only experienced supervisors were present at those  
3 hearings. They presented probable cause, they argued  
4 bail and that was almost like a separate job for them.  
5 So they do -- they get paid for their 40 hours or  
6 however many hours a week they worked to be trial  
7 lawyers and division chiefs and then they were able to  
8 get an additional salary, almost like a second job to  
9 do those. And we were allowed to have that same  
10 system. So when we needed other hours covered that  
11 the six lawyers were not capable of, we would bring in  
12 other lawyers in the office and would calendar them to  
13 cover those hours; and we still do that.

14 **Q. What experience did those six lawyers have**  
15 **when you first hired them?**

16 A. We didn't hire anyone who did not have  
17 criminal trial experience.

18 **Q. Did you require a certain amount of**  
19 **experience that they had to have practiced?**

20 A. No, no.

21 **Q. What was their experience level?**

22 A. I think everyone we hired -- some were  
23 extremely experienced, one was an assistant -- had  
24 been an assistant Federal public defender. Actually  
25 several of them had been assistance Federal public

1 defenders at some time. But all had been criminal  
2 trial attorneys and had -- I believe all had tried  
3 cases.

4 **Q. Do you find it hard to staff the 2:00 a.m.**  
5 **hearings?**

6 A. Some people like it.

7 **Q. Oh, really?**

8 A. Some people that -- that works with their  
9 schedule. So -- and as I said, we had other folks  
10 that would pick up shifts. But, no, we have people  
11 that are -- that like those hours and they -- you  
12 know, they don't complain.

13 **Q. So what are their shifts, or do they have**  
14 **shifts?**

15 A. They do.

16 **Q. How does that work?**

17 A. So there's basically three 8-hour shifts  
18 over 24 hours. And if I remember correctly, it would  
19 be 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m. and  
20 then 10:00 p.m. to back to 6:00 a.m. So -- and that  
21 just continues, and there will be two lawyers at very  
22 shift.

23 **Q. And how do the lawyers get the defendants**  
24 **that they're going to speak to?**

25 A. Well, the defendants -- the defendants are

1 held in a single place. When we started the program,  
2 they were held at what's called an inmate processing  
3 center, which is on Commerce Street in Houston.  
4 Recently a new facility opened that we call the joint  
5 processing center, which is on...

6 **Q. San Jacinto?**

7 A. It's on San Jacinto, but I'm blanking on the  
8 cross street. And in that facility there is a big,  
9 open area that the deputies bring new prisoners who  
10 have been received. They've been identified, they are  
11 ready to be interviewed by pretrial services officers  
12 and our lawyers. And we may talk to them first,  
13 pretrial services may talk to them first; but there is  
14 usually many hours before they get before a  
15 magistrate, if they even need to appear before a  
16 magistrate. In some cases we have a system to  
17 identify that they are presumed eligible for a  
18 personal bond, and that is simply a -- done by  
19 paperwork. So the pretrial services officer brings it  
20 to the -- we call them criminal hearing officers.  
21 That's how they're created by a statute for Harris  
22 County. But they're magistrates, and they'll sign off  
23 on them without a hearing.

24 **Q. Okay. Let me break that down a little. So**  
25 **the attorneys are at the inmate -- or joint processing**

1 **center?**

2 A. Correct.

3 **Q. 24 hours a day, 365 days a week?**

4 A. Correct.

5 **Q. Do they have an office there?**

6 A. We do. It's very small because when they  
7 designed that building, this was not contemplated. So  
8 we got what was going to be an interrogation room.  
9 They had taken out the cameras, and we also have a  
10 couple of cubicles that we can interview. So we've  
11 kind of expanded our space, but it wasn't really  
12 designed for us. The district attorneys, however, are  
13 not there. They appear by video.

14 **Q. And you said those that have been**  
15 **identified. What do you mean by that?**

16 A. I forget what I was talking about.

17 **Q. How do you -- how do they know to bring them**  
18 **to the public defenders?**

19 A. Well, they don't. They put them in this big  
20 room. They used to be holding cells, but now they're  
21 just kind of a big room. Looks like an airport  
22 waiting room. They can see TVs that have like closed  
23 caption, CNN and other information on it. And they  
24 sit there. And there's a PA system which you can  
25 request somebody come to your cubicle to come see you.



1 So we have a -- there's a -- there's a justice  
2 management system. So we know by computer who has  
3 been brought up there and who is available to be  
4 interviewed.

5 **Q. So when somebody comes in and is booked, do**  
6 **they automatically get a public defender?**

7 A. We would -- do they automatically get -- we  
8 would address everyone who is -- who has been -- and  
9 they actually haven't been booked yet. They have just  
10 been received at that point. They book them after  
11 this whole process is over. But, anyway, we would --  
12 we would reach out to every person that gets to that  
13 stage that has been received. I mean, someone may go  
14 to medical, someone may go straight to medical,  
15 someone may be, as they say, disruptive where they put  
16 them, you know, somewhere else. But everyone who is  
17 -- who does not meet those exceptions is available  
18 that are in the computer system. We get a list of the  
19 docket and we know to interview them and we call them  
20 up.

21 **Q. Se you're not specifically looking for**  
22 **indigent defendants?**

23 A. No. In fact, the order does not -- the  
24 basis for representation is not based on indigents.

25 **Q. So walk me through the process of when a PD**

1 **calls somebody else up. What happens?**

2 A. Okay. So we have an interview sheet that we  
3 go through with them and it covers -- it covers  
4 information that we would need to know about their --  
5 their income, employment. It's not just financial  
6 but, you know, things about their history that would  
7 help us just at this hearing because we don't want to  
8 know about the facts of their case. We don't want to  
9 know too much about what's going on otherwise we'll --  
10 we may create conflicts later, especially if there are  
11 people -- multiple people arrested in the same case.  
12 So our information that we're gathering is about their  
13 tie to the community and their criminal history, if  
14 any.

15 **Q. So you guys don't do conflict checks when**  
16 **you're --**

17 A. There's not a way to do that at that point,  
18 no. In fact, we know there are cases in which we  
19 could not represent them beyond this hearing because  
20 two people are arrested for the same robbery and one  
21 may blame the other. So we know there -- there are  
22 potential conflicts; but because we don't get into the  
23 facts of their case, we avoid those issues.

24 **Q. So how do you argue about probable cause if**  
25 **you don't know the facts of their case?**

1 A. Well, we limit that argument to what is  
2 stated in the probable cause. So if, for instance,  
3 the prosecutor were to read the facts and it was  
4 missing an element, we would point that out.

5 **Q. So after you do the interview, what happens?**

6 A. We do the interview then --

7 MR. MCCOLLUM: Objection, form.

8 A. -- then we wait -- I mean, there is  
9 either -- they're either going to be eligible for  
10 the -- for the early release without a hearing or they  
11 will appear at the hearing and that will be at the  
12 next docket. There is -- I think there is six of  
13 those over the course of 24 hours. And so, you know,  
14 the way we have the shifts for our lawyers, usually  
15 the last set of lawyers have completed all the  
16 interviews for the next hearing so that when those  
17 lawyers -- the new lawyers show up, that is already  
18 completed. So everyone kind of gets it done for the  
19 next set of lawyers.

20 **Q. (By Ms. Stafford) Do you find any hiccups**  
21 **between someone having written something down and**  
22 **the defendant coming and saying where is my person I**  
23 **talked to, I told them very personal information**  
24 **that he didn't write down or anything like that?**

25 A. I don't think I've ever had that problem,

1 no, or the problem -- one -- one of the issues the  
2 judges brought up was, well, why won't they say can I  
3 have that lawyer I had at the bail hearing. And I  
4 don't think we've ever had that issue.

5 **Q. Okay.**

6 **A. Yeah.**

7 **Q. And you said that you would identify someone**  
8 **who is presumed eligible for a PR bond. Who are those**  
9 **people?**

10 **A.** There's a list that's in their local rule  
11 now. Really what they have are everyone is presumed  
12 eligible for a personal bond except if they're  
13 carve-out offenses. So assault family violence would  
14 be a carve-out offense, meaning they have to go before  
15 the magistrate because that's one of the few -- and  
16 we're mostly talking about the misdemeanors, but there  
17 are carve-out offenses for felonies that were created,  
18 too. And so of the misdemeanors, there's just a few  
19 types of cases. I think DWI is second and maybe one  
20 other thing, but otherwise there's a presumption that  
21 they should be released.

22 Now, the district attorney can raise  
23 questions about, you know, prior history and  
24 everything that -- that could get them to a hearing  
25 even if they're normally presumed -- and that

1 criteria, I can't really tell you what that is.  
2 You'd have to ask somebody from the district  
3 attorney's office why they would flag a case. But  
4 there are -- even of the offenses that are presumed  
5 personal bond, they can raise an issue and get it to  
6 a hearing before a magistrate.

7 **Q. And how many people would you think that the**  
8 **public defender's office sees a day?**

9 A. About 200 over 24 hours.

10 **Q. How long does it typically take from where**  
11 **somebody is brought in to when they see an attorney?**

12 MR. MCCOLLUM: Objection, form.

13 A. It's hard to say because I'm not sure how  
14 much the new JPC procedure has sped up receiving or  
15 slowed it down, but it's probably at least several  
16 hours.

17 MS. STAFFORD: Do you need to take a break?

18 THE WITNESS: No. I'm just telling them I  
19 can't talk.

20 **Q. (By Ms. Stafford) So you're saying a new**  
21 **process. What is the new process that you're**  
22 **talking about?**

23 A. So because the facility is designed  
24 differently, they all come in a big sally port.  
25 All -- all agencies now -- all -- the big change is --

1 and this I don't think has completely gone into effect  
2 yet -- is under the old system, HPD, which is the  
3 biggest law enforcement agency in Harris County, would  
4 take people to a city jail or holding and they would  
5 be booked there and then later it would be a chain and  
6 they get moved. And then many of the outlying cities  
7 and towns -- and I think we have 70 law enforcement  
8 agencies that cover Harris County -- they all have  
9 their own methods. But now under this new joint  
10 processing center, they're all going to be brought  
11 first after arrest to be booked into this Harris  
12 County. And so they all get brought into the sally  
13 port. They go into a room that they do receiving  
14 where they get the basic information. An officer  
15 takes their property. The -- they're assigned to one  
16 of those bands that has a, you know, bar code on it  
17 and that -- as they go through each part of the  
18 system, the bar code follows them, and ultimately they  
19 go to the second floor where this big room is. And  
20 that's where we first get the opportunity talk to  
21 them.

22 **Q. And how long does it take from when they**  
23 **talk to an attorney to magistration? I guess -- are**  
24 **you calling it initial bail hearing? Does it matter**  
25 **what we refer to it?**

1 A. I'd say, again, several hours.

2 Q. So several hours from receiving to seeing an  
3 attorney and several hours from attorney to  
4 magistrature. So that is between four and six?

5 A. Yeah. Could be more, but probably not much.

6 Q. Okay. Is there ever a point where somebody  
7 says you have to call so and so and you can't get  
8 ahold of them and you wait for the next magistrature?

9 A. There are people who appear on the docket  
10 that for whatever reason, maybe they're in medical or  
11 something and we haven't seen them and they may get  
12 moved to another docket. Yeah.

13 Q. And in that case it would take longer for  
14 them to --

15 A. Correct.

16 Q. -- go through the process?

17 A. Yes.

18 Q. Is there a set time where you guys have to  
19 say you have to be magistrated at this point?

20 A. Is there a time that we can say that? I  
21 mean, the process assumes that they're going to get  
22 there in 24 hours. Now, that doesn't always happen  
23 but that's -- that's what -- that's the assumption  
24 everyone works under.

25 Q. So what happens in a case where someone

1 **doesn't get magistrated in 24 hours?**

2 MR. MCCOLLUM: Objection, form.

3 A. It depends. I mean, if it's a misdemeanor,  
4 then they're supposed to be eligible for a --  
5 considered for a personal bond if they weren't  
6 already. If it's a felony, they have up to, I think,  
7 48 hours in Harris County because we're such a big  
8 county. So there would -- there would not be that  
9 effect.

10 **Q. (By Ms. Stafford) Do you guys keep track**  
11 **of those numbers?**

12 A. We try to keep -- well, until we've  
13 interviewed someone, they're not really on our radar.  
14 So, no, we don't. I don't have access to the  
15 sheriff's numbers. So the only way we would be -- we  
16 would know about a situation like that is if someone  
17 ultimately came to us and, you know, nothing had  
18 happened to them for days. That would stand out,  
19 yeah.

20 **Q. So how did this work before 2017? When was**  
21 **the first time the public defender's office saw a**  
22 **defendant?**

23 A. It would be -- well, in two different ways.  
24 So for misdemeanor cases, we were representing persons  
25 who had been certified as significantly mentally ill



1 in all 16 of the misdemeanor courts. And there was --  
2 there's actually a computer algorism that identifies  
3 them. And so we get -- there's a printout of that  
4 every morning. So the morning they're going to court  
5 to appear in the court of jurisdiction, we would know  
6 that that person was going to be our client. So we  
7 get that every day. So we would be there that  
8 morning. Typically it's the morning after they were  
9 arrested. But, again, because of all these other  
10 issues and especially with mentally ill people, there  
11 could be reasons why they don't go directly to court  
12 quickly. But that would be the first time, their  
13 first appearance in the court of jurisdiction.

14 Same is true for felonies, but  
15 that -- the determination of whether we get those  
16 cases is a little different. We're called by the  
17 court coordinator. It's done on a wheel system.  
18 But, again, it would -- it would probably be their  
19 first appearance in court.

20 **Q. So you're saying first appearance in court,**  
21 **would that be --**

22 **A. In the felony district court.**

23 **Q. Okay. A felony district court. Would they**  
24 **have already been magistrated at that point?**

25 **A. Yes.**

1 Q. Now, you say the new system is that  
2 everybody comes to this joint processing center; is  
3 that right?

4 A. Yes.

5 Q. So nobody comes already magistrated?

6 A. To where?

7 Q. To the joint processing center.

8 A. Right.

9 Q. Okay. What about someone who came in on a  
10 warrant, would they be considered already magistrated?

11 A. No.

12 Q. Would their bond have already been set?

13 A. Possibly, yes.

14 Q. What do you do in those cases?

15 A. Well, we may reurge for -- if there's a  
16 reason, we might reurge consideration of whatever bond  
17 was set.

18 Q. Okay. And the magistrate is allowed to hear  
19 that?

20 A. They are allowed, yes. I know the  
21 misdemeanor judges changed their rules recently to  
22 make that more clear, that they have full authority.

23 Q. What do you mean by that?

24 A. One of the contentions in the O'Donnell  
25 suit, which you may know about, is the hearing

1 officers claimed they had -- they were under orders  
2 when and when to -- when and when not to issue  
3 personal bonds. And so there was -- the county judges  
4 took the position they had full discretion. And so  
5 they have now made that completely clear, that they do  
6 have that discretion.

7 **Q. To issue personal --**

8 A. Right. Regardless of the circumstances,  
9 that that is within their discretion.

10 **Q. Okay. So what if someone comes in from**  
11 **another state on a warrant where their bond is set,**  
12 **are they allowed to give them a PR bond?**

13 MR. MCCOLLUM: Objection, form.

14 A. I mean, there's a separate -- I'm trying to  
15 remember because there's a separate set of laws that  
16 deal with detainers and what -- and what they're  
17 allowed to do. But I think they have the same  
18 authority that a county or a district court judge  
19 would have in reviewing that.

20 **Q. (By Ms. Stafford) Do you guys have a**  
21 **policy of how long you have to wait to see -- to**  
22 **have a magistration hearing after you see your**  
23 **client?**

24 A. No -- do I have a policy?

25 **Q. Does the public defender's office have a**

1 policy?

2 A. No. I don't control that.

3 Q. Okay. So you don't have any sort of  
4 three-hour waiting time before they're allowed to see  
5 a magistrate?

6 A. No. There's no -- no.

7 Q. So somebody could come in, see a lawyer and  
8 get magistrated within an hour?

9 A. It's possible.

10 Q. Okay.

11 A. But it usually doesn't work that way.

12 Usually we're waiting on other people usually.

13 Q. Yeah.

14 A. They're not waiting on us.

15 Q. What does the public defender do between the  
16 time they've met with a defendant and that defendant's  
17 magistration?

18 A. Well, there's plenty of people to interview.  
19 So usually you're busy the whole time. So there's not  
20 a lot of dead time. But if -- you might in some cases  
21 call a relative or a parent to get additional  
22 information. You might do a records check about their  
23 criminal history to follow up. You might, you know,  
24 review what we call DIMs, which is the -- the --  
25 actually the computer filing of the complaint that the

1 district attorney's office uses.

2 **Q. And is that required by the public**  
3 **defender's office?**

4 A. There is no written policy other than to  
5 zealously represent your client. So you do what  
6 you -- the best you can under the time constraints and  
7 what you have available.

8 **Q. So sometimes it's just not possible to do**  
9 **that stuff?**

10 A. Sometimes.

11 **Q. Sometimes depending on the time, the day,**  
12 **number of defendants?**

13 MR. MCCOLLUM: Objection, form.

14 A. We never run out of time to talk to them,  
15 but with -- in certain cases we may have more  
16 information than others. And certain defendants are  
17 more likely to be released than others and, therefore,  
18 we may spend more time rather than a situation where  
19 someone clearly is not going to be able to be  
20 released.

21 **Q. (By Ms. Stafford) How long does a typical**  
22 **interview last with a defendant?**

23 A. It can last 5 to 15 minutes.

24 **Q. And you said they might meet with pretrial**  
25 **services before or after they meet with the attorney;**

1 **is that correct?**

2 A. Sometimes we work with pretrial services to  
3 be the most efficient. Their cubicles are right next  
4 to where we are. So they might be interviewing  
5 someone, and then we might interview them second; or  
6 one of their people are busy, so we may get to someone  
7 before they do.

8 **Q. And what does pretrial services do?**

9 A. Well, they do the -- they do a financial --  
10 they work a financial affidavit with them, which is  
11 what the court relies on. That's their primary  
12 information they get.

13 **Q. Does the public defender's office use that**  
14 **financial affidavit?**

15 A. We do, but we also ask the same -- you know,  
16 similar questions.

17 **Q. Does that financial affidavit go to the**  
18 **judge at the initial bail hearing?**

19 A. It does. It also follows them to the court  
20 of jurisdiction because it's also a basis for  
21 appointment of counsel.

22 **Q. What does the public defender argue on at an**  
23 **initial bail hearing?**

24 A. Whenever -- either -- if possible,  
25 eligibility for a personal bond; but if that is not

1 likely because of the seriousness of the offense, then  
2 whatever money amount that we believe they could make.

3 **Q. Now, there is a couple of different kinds of**  
4 **bonds; is that correct?**

5 A. There are.

6 **Q. So there's a PI bond, and that's where**  
7 **someone is released on their personal recognizance; is**  
8 **that correct?**

9 A. Well, there is a personal bond, and that  
10 means it's unsecured by money but you are -- you are  
11 liable for an amount of money if you don't appear.  
12 And that is the primary bond that is used -- unsecured  
13 bond that is used in Harris County. The term "PR  
14 bond" is kind of used generically; but it's really not  
15 any different than a personal bond, which is what the  
16 code of criminal procedures talks about. People say  
17 personal bond, personal recognizance bond. I think  
18 there may be some other term. But in Texas, it's  
19 either a personal bond, a cash bond or a surety bond.

20 **Q. So what happens if somebody is supposed to**  
21 **appear in court on a PR bond and doesn't?**

22 A. Then, you know, the judge could issue a  
23 warrant for their arrest. The district attorney could  
24 seek forfeiture.

25 **Q. And so the public defender's office is**

1 looking to get PR bonds for most of the defendants; is  
2 that correct?

3 A. Correct. That would -- that would be -- you  
4 know, that would put -- that would be what would be in  
5 the client's interest. And so, yes, the least  
6 restrictive way to release them. It's not always  
7 going to be likely but.

8 Q. Do you know any statistics on that since  
9 2017 when the -- when they were represented by public  
10 defenders, how many PR bonds there are?

11 MR. MCCOLLUM: Objection, form.

12 A. I don't have a reliable number for you.  
13 They have increased quite a bit.

14 Q. (By Ms. Stafford) Do you know anybody who  
15 is doing a study on that?

16 A. The agency that would be able to come up  
17 with that number is Harris County Pretrial Services,  
18 but I have yet to see a definitive report.

19 Q. What about failure to appear rates, do you  
20 know anything about those?

21 MR. MCCOLLUM: Objection, form.

22 A. That's disputed, too, because what failure  
23 to appear means is not -- there is no term of art for  
24 that.

25 Q. (By Ms. Stafford) Okay. So what do you



1 **mean is disputed?**

2 A. Well, failure to appear could be the docket  
3 is called, it's 9:00 o'clock, the person is not there  
4 but they show up at 10:00 o'clock. You know, is that  
5 failure to appear? To some judges who -- it may be.  
6 Other judges may say we'll reset it till tomorrow. So  
7 there is no single definition of failure to appear.

8 **Q. So it makes it pretty hard to track?**

9 A. Yes.

10 **Q. And why is the goal of the public defender's**  
11 **office to get PR bonds?**

12 A. Because if we can get our clients released,  
13 then we can work with them on the outside. They can  
14 continue to work, go to school, they have -- I don't  
15 want to say the leisure, but they have the time to  
16 make decisions about their case without the pressure  
17 of being incarcerated.

18 **Q. And how does that transition work for**  
19 **someone who is out on a PR bond with -- with a public**  
20 **defender?**

21 MR. MCCOLLUM: Objection, form.

22 A. Well, they're not necessary -- those folks  
23 are not necessarily going to be our clients. So what  
24 will happen next is when they appear in court, they'll  
25 be appointed a lawyer. It may be us. Right now we

1 still have only a small percentage of all appointed  
2 cases. So most of the time those people are going to  
3 be appointed a private assigned counsel.

4 **Q. (By Ms. Stafford) You say you have a small**  
5 **percentage of all the cases. Do you know what that**  
6 **percent is?**

7 A. About 8 percent right now.

8 **Q. And how do they determine whether or not**  
9 **they get a public defender versus a private attorney?**

10 A. So ultimately it's up to the judges; but in  
11 the misdemeanor courts, they -- all 16 courts follow  
12 that algorithm. So we get all of those mentally ill  
13 or intellectually disabled defendants. And that is a  
14 bit higher than the average. It's probably closer to  
15 15 percent of all those cases. In the felony courts  
16 it's -- again, it's on a wheel; but it is a still up  
17 to the courts. And until recently, some of those  
18 courts rarely appointed us. After the last election,  
19 I believe all the judges have now confirmed they're  
20 going to appoint our office on a regular basis. So we  
21 expect our appointment rate to go up to about 20  
22 percent in the next year.

23 **Q. The notes that the public defender's officer**  
24 **takes in that initial hearing for the defendant, does**  
25 **that follow their file?**

1           A.     Right now it does not. We keep them. If a  
2 lawyer were to contact us -- and we've certainly made  
3 it known, everyone knows that we represent them in --  
4 then we would provide that to them. And, you know,  
5 all these proceedings are videoed. And so it is often  
6 a practice -- I know it's a practice in our office of  
7 obtaining videos of what happened at those  
8 proceedings; and some lawyers, private lawyers do,  
9 too, and district attorneys do often.

10           **Q.     Do any of the public defenders speak to the**  
11 **attorneys that have been appointed to somebody that**  
12 **they may have represented at the initial bail hearing?**

13           A.     Unless they contact us, it is unlikely  
14 that -- we don't have time. It's 200 people a day to  
15 contact all those lawyers.

16           **Q.     Do you guys have interns that represent any**  
17 **indigent clients?**

18           A.     No.

19           **Q.     Do you have interns that do any of the**  
20 **initial bail hearings?**

21           A.     Interns?

22           **Q.     Uh-huh.**

23           A.     No.

24           **Q.     Like law students?**

25           A.     No.

1 Q. I know there's -- some people have law  
2 clinics. I was just curious --

3 A. Right. No, we don't.

4 Q. Do you expect that you have to have more  
5 attorneys now that Harris County has said -- Harris  
6 County judges have said that they're going to appoint  
7 public defenders?

8 A. Yes. Our budget year started March 1st. I  
9 was added 61 new positions, which are attorneys,  
10 investigators, social workers, administrators.

11 Q. Since that new election that you just spoke  
12 of?

13 A. Right, which included a change in the  
14 commissioners court.

15 Q. And what was the budget for that?

16 A. So my budget for this fiscal year starting  
17 March 1 is about \$21 million.

18 Q. What was the difference between the 21  
19 million and what you had previously?

20 A. It previously was about 11 million.

21 Q. Okay.

22 A. It's almost doubled.

23 Q. And how is that money funded?

24 A. Harris County.

25 Q. Fully?

1 A. Fully.

2 **Q. Do you guys apply for any grants?**

3 A. We do, but grants are typically for special  
4 projects and then those projects end and the grants  
5 are rarely continued. So we received a grant last  
6 year to -- for a statewide review of DNA in cases  
7 where there were multiple sources because there were  
8 advances in DNA technology and they found that you  
9 need to go back and look at those cases. So we did  
10 that, but that was for a limited time and that is --  
11 that will be over next year. But nothing for our  
12 general operating, for our normal caseload. That's  
13 all Harris County.

14 **Q. What about the Texas Defense Commission, did**  
15 **you receive any money from them?**

16 A. The DNA grant was from them. I think that  
17 was our only grant from them.

18 **Q. So they didn't provide any grants for the**  
19 **initial bail hearing and hiring staff?**

20 A. No, no.

21 **Q. Did Harris County hire additional**  
22 **magistrates since 2017?**

23 A. Yes.

24 **Q. Specifically for these initial bail**  
25 **hearings?**

1 A. Yes, yes. That's --

2 **Q. Do you know how many?**

3 A. That's all they do, yes.

4 **Q. Okay.**

5 A. How many? At least half a dozen, but I  
6 think it's more than that.

7 **Q. So can you walk me through an initial bail**  
8 **hearing?**

9 A. Sure. The magistrate will address the  
10 person by name, ask them to come up. There's usually  
11 a box they stand in before the bench and they ask the  
12 district attorney -- well, they do a brief explanation  
13 of what the purpose of the hearing is to the  
14 defendant. The three main objectives are that they're  
15 going to determine whether there's probable cause, set  
16 bail and if -- they're going to ask them if they want  
17 an appointed lawyer for the rest of their case. And  
18 so the district attorney will then read the statement  
19 of probable cause, and the court will make a finding  
20 one way or the other.

21 And then they'll go to bail and there  
22 will be a recommendation from the district attorney  
23 and a recommendation from the defense attorney and  
24 they'll make a decision. And then they'll -- if  
25 they request -- there's also a question of whether

1 or not -- if they're not a citizen, whether they  
2 want their counsel contacted. But then the only  
3 other request is do you want to be appointed a  
4 lawyer. They make a notation, and then that follows  
5 them to the court of jurisdiction.

6 **Q. What about somebody who doesn't get a PR**  
7 **bond, what happens in those cases?**

8 A. Then some amount of money will be applied to  
9 the -- what they would either have to pay outright or  
10 a percentage of -- usually 10 percent to a bail  
11 bondsman, sometimes with collateral, sometimes a  
12 higher percentage.

13 **Q. What about if it's something they still**  
14 **couldn't afford?**

15 A. Then they remain in custody.

16 **Q. Do you guys keep track of those numbers at**  
17 **all?**

18 A. I don't have those numbers.

19 **Q. Well, what -- do you guys keep track of**  
20 **those clients at all?**

21 A. Unless we're appointed to them, no.

22 **Q. So is there an opportunity for another**  
23 **hearing for them if they can't -- still can't afford**  
24 **the bail?**

25 A. Yes. The misdemeanor courts have an

1 automatic review. I do not believe it's in the felony  
2 courts' local rules. I believe the attorney, whoever  
3 is appointed would need to revisit that with the  
4 court. They could either file a motion for reduction  
5 of bail or they could file a habeas corpus.

6 **Q. When is that attorney usually appointed?**

7 A. They're usually there the first day that the  
8 person appears in court, which may not be the next day  
9 after -- after their magistration but should be fairly  
10 soon thereafter. It should be that week at least.

11 **Q. And you said that's for misdemeanors and**  
12 **felonies?**

13 A. Yes.

14 **Q. If there was a client who said that you**  
15 **absolutely need to talk to somebody before they had**  
16 **their initial bail hearing, would a public defender**  
17 **wait for the next magistration in order to talk to a**  
18 **witness, let's say?**

19 A. Unlikely. I don't recall that ever  
20 happening. I mean, it's not impossible that they  
21 would ask for that to happen; but I would say that's  
22 an extremely rare circumstance.

23 **Q. Now, you wrote a declaration in this case;**  
24 **is that correct?**

25 A. Correct.



1 (Exhibit 1 marked.)

2 Q. (By Ms. Stafford) Does this look like the  
3 declaration that you wrote for this case?

4 A. It is.

5 Q. See in paragraphs 6 and 7, do those look  
6 like the opinions you're offering in this case?

7 A. Yes.

8 Q. So let's take a look at paragraph 8. And  
9 you state that individual characteristics can  
10 highlight either mitigating or aggravating evidence  
11 depending on the facts and how they are interpreted.

12 A. Yes.

13 Q. Can you give me an example of mitigating  
14 circumstances?

15 A. So --

16 MR. MCCOLLUM: Objection, form.

17 A. If the defendant were -- needed -- in terms  
18 of bail?

19 Q. (By Ms. Stafford) Yes.

20 A. Okay. All right. So, for instance, if the  
21 defendant were the primary breadwinner in the home and  
22 the family needed them, this might be something to  
23 influence the person deciding, the hearing officer; if  
24 they would lose their job, if there were certain  
25 things in their life that were -- that showed that

1 they are responsible, like they've been in the system  
2 before but they never missed court, something like  
3 that.

4 **Q. What about aggravating evidence?**

5 A. Well, we would not raise that. The  
6 prosecutors would probably point to criminal history,  
7 seriousness of the offense. Those are aggravating --  
8 the main aggravating issues, and failure -- previous  
9 issues of failing to appear in court.

10 **Q. And how do you guys typically address those?**

11 A. Well, sometimes we can't. I mean, if it  
12 happened, it happened; but usually we're helping  
13 balance the mitigating factors against the aggravating  
14 factors.

15 **Q. And you -- you just asked me in terms of**  
16 **bail. What other representation are you talking**  
17 **about, probable cause or?**

18 A. No, no. Mitigation -- when you're talking  
19 about criminal lawyer, you're usually talking about  
20 sentencing.

21 **Q. Okay. And what are the issues at stake that**  
22 **you talk about in this paragraph?**

23 MR. MCCOLLUM: Objection, form.

24 **Q. (By Ms. Stafford) It's on the -- it looks**  
25 **like the fifth sentence down, "defendants are**

1 **unfamiliar with the issues at stake."**

2 A. Okay. So the key issues for release are  
3 whether or not someone is likely to reappear and  
4 whether or not they'll commit further offenses. And  
5 what -- what tends to show those things are, again,  
6 the type of mitigating circumstances that I was  
7 explaining. What defendants think are important often  
8 are the facts of case against them. And so left to  
9 their own devices they'll start talking about the  
10 guilt or innocence of -- in the case, which is really  
11 not relevant to hearing but can also incriminate them  
12 and get them in trouble later. So it's basically a  
13 lack of understanding of the relevance of what's  
14 important at the bail hearing.

15 **Q. Well, what if they receive this type of**  
16 **advocacy within 12 hours of being arrested, would you**  
17 **find any harm there?**

18 A. It's not so much the time as it is the first  
19 opportunity to make that representation. So if -- if  
20 no decision has been made about their bail, it may  
21 take 12 hours to get to magistration. But they need  
22 advocacy at the first possible instance but -- what's  
23 important.

24 **Q. Why -- why is that?**

25 A. Well, once a decision is made, it's hard to

1 change.

2 **Q. What makes you say that?**

3 A. Statistically I've seen that in Harris  
4 County, that the -- when you -- when you argue for  
5 review, the percentage of times bail is lowered or  
6 reduced to a personal bond is low, single digits.

7 **Q. Where do you get those statistics?**

8 A. They were done in O'Donnell. I've seen --  
9 I've seen -- it's there in the testimony somewhere.  
10 My own practical experience is that once a decision  
11 has been made, it's hard to get it changed.

12 **Q. Have you seen any statistics in other**  
13 **counties?**

14 A. No.

15 **Q. What about Galveston County?**

16 A. I am not familiar with statistics in  
17 Galveston County.

18 **Q. So you don't know what the percentage of**  
19 **bail was lowered from the initial bail hearing to the**  
20 **bail review hearing?**

21 A. I do not.

22 **Q. Can you plead guilty at the initial bail**  
23 **hearing?**

24 A. No. You can incriminate yourself, but you  
25 can't plead guilty.

1           **Q.    Do you know what a bail hearing is like in**  
2 **Galveston?**

3           A.    Only what I've read from the local rule; but  
4 I have not seen one, no.

5           **Q.    Is a bail review hearing different than the**  
6 **initial bail review hearing in Harris County?**

7           A.    Having not seen one, I don't -- I can't say  
8 with certainty.

9           **Q.    Okay.  You said you read about it, though?**

10          A.    I read the rule, that's what I'm -- I  
11 understand that it is reviewed.

12          **Q.    Okay.  And that's your only understanding of**  
13 **bail review hearings in Galveston County?**

14          A.    Correct.

15          **Q.    In paragraph 13 you state that:  "Lawyers**  
16 **can also help get some defendants released from**  
17 **custody in what were already close calls."  What do**  
18 **you mean by that?**

19          A.    I mean we're emphasizing mitigation and the  
20 magistrate may not be paying attention to the  
21 importance of that mitigation.  So having a lawyer  
22 frame it properly, especially when you have a  
23 prosecutor arguing the other way, can be the basis to  
24 get somebody out.

25          **Q.    So you're saying that that -- that didn't**

1 happen until the bail review hearings in Galveston  
2 County. You don't believe that, though, would be  
3 advocating for the defendant?

4 A. I believe it's much less likely under those  
5 circumstances.

6 Q. Is there anything preventing an attorney to  
7 make that argument in the bail review hearing?

8 A. No, there's nothing preventing them from  
9 making the argument.

10 Q. Now, in paragraph 20 you quote the American  
11 Bar Association that has the goal of: "Individuals  
12 charged with a crime and confined in jail are provided  
13 prompt, meaningful access to an attorney who works to  
14 secure their immediate release and to ensure that any  
15 release condition is the least restrictive means to  
16 achieve its objective." Did I read that correctly?

17 A. Yes, you did.

18 Q. And where does it say their goal is to  
19 provide an attorney at an initial bail hearing?

20 A. They don't say that.

21 Q. So if someone is provided an attorney in the  
22 bail review hearing, would that meet with the American  
23 Bar Association's goal?

24 A. I think that's inconsistent with prompt.

25 Q. Why is that?

1           A.     Because it's not -- it is not the first  
2 opportunity that this could happen.

3           **Q.     So you think that prompt isn't a time thing.**  
4 **You think that's a --**

5           A.     Well, whatever is available under the  
6 circumstances. Again, we talked about how there are  
7 many different types of delays that happen. But we  
8 are the first lawyers -- we represent them at the  
9 first possible time a decision is made about their  
10 bail.

11          **Q.     And then in paragraph 21 you listed the**  
12 **report, "Don't I Need a Lawyer?"**

13          A.     Correct.

14          **Q.     Do you know when that was written?**

15          A.     I'm pretty sure it's in the last five years,  
16 but I don't remember the date. It's attached as an  
17 exhibit.

18          **Q.     I've got it. It's Exhibit 2. It's your**  
19 **declaration Exhibit 2.**

20          A.     2015.

21          **Q.     So that is before the decision in O'Donnell?**

22          A.     Before the preliminary -- yes, yes.

23          **Q.     Does this account for having an attorney at**  
24 **the initial bail hearing?**

25          A.     I don't know. I don't remember if it

1 specifically says that. Again, it talks about a  
2 timely manner.

3 **Q. So does it account for defendants receiving**  
4 **bail review hearings?**

5 A. I don't think it addressed bail review  
6 hearings.

7 **Q. Does it assume that an arrestee does not see**  
8 **a judicial officer within 24 to 48 hours?**

9 A. No. It's based on a -- it's a national  
10 standard, and the 24 hours is a Texas procedure.

11 **Q. On page 9, it says: "Part 2, Overview of**  
12 **Pretrial Release and Bail Proceedings."**

13 A. I see that.

14 **Q. And in the fifth sentence it says: "Jail**  
15 **capacity and the volume of people entering local jails**  
16 **vary."**

17 MR. MCCOLLUM: I'm sorry. Could you tell  
18 us where the page is?

19 MS. STAFFORD: The fifth sentence. I said  
20 second paragraph, fifth sentence.

21 MR. MCCOLLUM: Second paragraph. Thank  
22 you.

23 **Q. (By Ms. Stafford) Where is starts with:**  
24 **"Jail capacity and the volume of people entering**  
25 **local jails vary, but a defendant in a populated**



1 city or county can be expected to be placed in a  
2 crowded holding cell and wait 24 to 48 hours prior  
3 to being brought before a judicial officer."

4 A. I see that.

5 Q. So are they assuming in this that people  
6 aren't seen for 24 to 48 hours?

7 A. They use the word "can." So I'm assuming  
8 they're not saying that that's true in all cases but  
9 that it can happen.

10 Q. So you're saying they're not basing it off  
11 24 to 48 hours?

12 A. Could be more, could be less. That's a  
13 ballpark they're using.

14 Q. So at an initial bail review hearing -- I'm  
15 sorry. At an initial bail hearing can a public  
16 defender challenge the state's evidence that probable  
17 cause existed?

18 A. We do.

19 Q. And what does that look like?

20 MR. MCCOLLUM: Objection to form.

21 A. There would be some element of the charge  
22 that is not met.

23 Q. (By Ms. Stafford) Okay. Can you explain  
24 to a layperson what that would mean?

25 A. So they say someone has committed trespass

1 but they have no facts to establish that they had no  
2 right to be there.

3 **Q. Okay. Do they bring witnesses to the**  
4 **initial hearing?**

5 A. No.

6 **Q. Why not?**

7 A. I think it's mostly to do with efficiency.

8 **Q. So you think a lot of times a judge takes**  
9 **the attorney's word when they say they have strong**  
10 **ties to the community?**

11 A. He takes the -- well, they weigh -- it works  
12 for both sides. The prosecutor is simply stating  
13 facts that they're not proving by any other means  
14 except that a police officer told them that. The  
15 defense lawyer is stating facts that they have gotten  
16 either from the defendant or from some other source.  
17 So we call it proffering evidence. So no -- otherwise  
18 no evidence is admitted. The rules of evidence don't  
19 apply. The hearing officer makes the best judgment  
20 they can based on proffered facts.

21 **Q. Can a public defender represent an arrested**  
22 **person in a 1517 hearing where their bond has already**  
23 **been set by another magistrate?**

24 A. Yes.

25 **Q. Does Harris County make a weekly report of**

1 **each arrestee that they represent?**

2 A. Harris County or my office?

3 **Q. I'm sorry. Public defender's office.**

4 A. No. We do not report to anyone but our --  
5 we have our own internal statistics and case  
6 management that we do not share.

7 **Q. And you said your internal statistics and**  
8 **what?**

9 A. Case management.

10 **Q. What do you guys track in your internal**  
11 **statistics?**

12 A. Well, I mean, I could -- I could tell you  
13 the total number of people we represented at any time.  
14 As to bail, it's typically numbers of people; and then  
15 we save whatever notes we have per case, but we don't  
16 have a system of tracking individual information about  
17 each defendant. There's just too many of them.

18 **Q. You're saying that would be unworkable for**  
19 **you to track that information?**

20 A. Right. And it's -- most of that information  
21 is recoverable through pretrial services. So -- and  
22 again, the videos are all saved. So if you needed  
23 something about what happened at the hearing, you  
24 could get the video.

25 **Q. Do you put the videos with their case notes?**

1           A.     We don't save the videos. Harris County  
2 services -- it's called universal services. Basically  
3 the IT department of Harris County holds onto those.

4           **Q.     So your statistics, your percentage just**  
5 **counts bodies?**

6           A.     That's all I can tell you.

7           **Q.     Okay. So what about names of defendants?**

8           A.     We have their names. I don't have -- in  
9 other words, we don't put them into our case  
10 management system so that you could do a search by  
11 name. What we could do is track through the -- find  
12 them through the county system and identify what  
13 docket they were on and then go back and find their  
14 information that we've saved. We've saved  
15 cumulatively by docket any notes and information in  
16 that case.

17          **Q.     Okay. So how would somebody request that**  
18 **information from you if they were an attorney**  
19 **representing --**

20          A.     If they were, they would call and we would  
21 be able to -- I would assume that would be within, you  
22 know, a short period of time after the initial  
23 appearance, days or weeks; and then we could figure  
24 out where that is and provide that to them.

25          **Q.     Has anybody asked you for those statistics?**

1           A.     Statistics are -- I'm trying to think if we  
2     were asked. I know from my own personal knowledge I  
3     asked our case management person to tell me so I could  
4     figure out how many people we were representing when  
5     we went through the budget process. I wanted to know,  
6     you know, what kind of work we were doing. But I  
7     don't think we've ever provided it for a report or  
8     outside of our office.

9           **Q.     So you don't keep track of who was denied a**  
10    **PR bond in that information?**

11          A.     No.

12          **Q.     Do you keep track of any conditions that**  
13    **were put on any bonds?**

14          A.     No. That -- again, that exists  
15    independently and we could -- we could find that  
16    information.

17          **Q.     Can somebody reject a public defender?**

18          A.     Yes.

19          **Q.     Do they just have to fill out paperwork, or**  
20    **how does that work?**

21          A.     Well, the initial rule was they had to agree  
22    to our representation. The county courts have changed  
23    that rule to be they have to reject our  
24    representation. Again, we have -- there's a  
25    difference now between how the felony courts deal with

1 it or not. But basically unless somebody tells us  
2 they don't want us, we continue to help them.

3 **Q. What's the difference in the felony?**

4 A. I think it will change once -- it's just  
5 because the lawsuit has pressured the county courts to  
6 move more quickly and change their rules. They've  
7 done that, but I believe we're going to have a  
8 consistent rule at some point.

9 **Q. So what's the rule now for felony courts?**

10 A. It's still the same -- the original rule,  
11 which is they're supposed to -- we're supposed to get  
12 their consent. And it's not written or anything.  
13 Usually the magistrate will just ask them.

14 **Q. Has anyone talked to the felony judges about**  
15 **changing that?**

16 A. Those conversations are going on. I'm not  
17 privy to all of them.

18 **Q. So you're saying the PR bond is the norm, or**  
19 **how do you phrase that? It's the norm for people or?**

20 A. Well, for misdemeanors it is the presumptive  
21 recommendation except for the carve-out offenses,  
22 which I think there are three or four. For felonies  
23 it's different. There is some -- there are some that  
24 are presumed personal bonds, like what we call state  
25 jail felonies for low levels of drugs. But on the

1 whole there are very -- there are very -- there are  
2 many fewer presumptive personal bonds for felonies  
3 than there are for misdemeanors.

4 **Q. Do the judges have a list of those**  
5 **presumptive --**

6 A. Yeah. If you go to the website for the  
7 county, you can find the local rules on those.

8 **Q. So what does the public defender do in those**  
9 **cases? Do they serve any purpose for those?**

10 A. Yeah. Well, there's always something at  
11 issue. The prosecutor may be asking for an extremely  
12 high amount of money that -- and we're arguing for an  
13 amount of money that they could afford even though  
14 it's unlikely a personal bond is going to applied. So  
15 a personal bond is not the be all and end all of what  
16 we do. We may be arguing for conditions that obviate  
17 the need for a high money bond. We may be arguing for  
18 less onerous conditions. There's always something at  
19 stake at bail unless they meet the few situations  
20 where the district attorney can file a motion and say  
21 this person is not eligible for bail.

22 **Q. Have you seen any news articles about**  
23 **failure rates of PR bonds in Harris County?**

24 A. Nothing based on -- I mean, there are --  
25 there were discussions in the news by both sides about

1 what failure to appear rates are, but there's no  
2 agreement of what they are. And so there are no  
3 reliable statistics about what they are.

4 **Q. So if someone said failure to appear rates**  
5 **have increased since, you know, the presumption of PR**  
6 **bonds, you would have to look at the underlying data?**

7 A. I think so. And one of the big  
8 misunderstandings about that was -- so, for instance,  
9 all of our homeless, mentally ill clients under the  
10 system where they did not get out before on personal  
11 bonds, typically those cases, they would either be  
12 restored on their medication and be -- and their case  
13 dismissed or maybe they were allowed to plead guilty  
14 and get time served. I mean, very quick resolutions  
15 of those cases. But they'd be back, you know, in a  
16 couple of weeks because our system has a population  
17 that just recurs.

18 And so under a new system where most  
19 people get out, yes, they might, quote, fail to  
20 appear; but it's the same problem. They have mental  
21 health issues, they have homelessness issues and so  
22 they're popping back in our system but -- you may be  
23 counting them as failures to appear, but they're  
24 coming back. So it's -- but under most  
25 circumstances, if you take that population out of



1 the mix, I don't think the failure to appear rate  
2 has increased at all.

3 **Q. And where do you get that information?**

4 A. Just generally what I've heard from pretrial  
5 services.

6 **Q. And they track that information?**

7 A. Yes, they can get you accurate numbers on  
8 that.

9 **Q. Do you know if they release that sort of**  
10 **information to the public, like in annual report or**  
11 **anything?**

12 A. They do an annual report, yes.

13 **Q. Have you looked at those reports?**

14 A. I don't know the last time they've issued  
15 one, no.

16 **Q. Do you know if they've issued one since**  
17 **there have been public defenders at the initial bail**  
18 **hearings?**

19 A. I'm not sure. I'm not sure if they have,  
20 but they should have by now. It's been more than a  
21 year. Of course, a number of things happened. It  
22 wasn't just the addition of public defenders. We have  
23 a risk assessment tool. There was -- you know,  
24 because of the lawsuit, there was pressure to release  
25 more people. So a number of factors played into it

1 beyond the representation.

2 Q. Do you know what the sheriff's office thinks  
3 about this bail reform?

4 A. They would like to get more people out of  
5 jail. So they support it.

6 Q. So you haven't received any pushback from  
7 law enforcement on the bail reform?

8 A. No.

9 Q. Have you heard anything in the news about  
10 someone on a PR bond committing an armed robbery?

11 A. That happened before and after. You cannot  
12 predict with 100 percent what someone will do when  
13 they're released.

14 Q. Have you heard anything from the community  
15 about this bail reform?

16 A. I've heard -- no, not a lot from the  
17 community. I don't think they have a sense of day to  
18 day how much has changed or how much it's affected  
19 them.

20 MS. STAFFORD: Let's take a quick break.

21 (Recess taken)

22 Q. (By Ms. Stafford) How many times can a  
23 public defender visit a defendant in the holding  
24 area?

25 A. As often as they can, want to.

1 Q. There's no limit --

2 A. No.

3 Q. -- on the amount of time?

4 A. No.

5 Q. How does the public defender make an  
6 argument that someone should be released on a PR bond  
7 if they've had multiple offenses?

8 A. Well, if they're low-level offenses, that's  
9 probably still in the ballpark.

10 Q. What about multiple failures to appear?

11 A. Then it's less likely it will succeed, but  
12 it may -- there may be explanations for the other ones  
13 and they may be old. This could be a 50-year-old man  
14 who failed to appear when he was a teenager. So there  
15 are circumstances that would explain that.

16 Q. Paragraph 30 of your report. And you're  
17 talking about reviewing the rules for Galveston County  
18 that calls for bail review hearings; is that correct?

19 A. Correct.

20 Q. And then at the very bottom you say:  
21 "Regardless of how quickly this occurs, possibly in  
22 less than 24 hours the initial bail setting prejudices  
23 defendants and the bail review procedures do not fix  
24 that prejudice." Can you explain that sentence to me?

25 A. The sentence reflects my belief that once

1 bail has been set, it is an uphill battle to change  
2 that in the defendant's favor.

3 **Q. So the prejudice you're speaking about is**  
4 **the amount of money set on the bond?**

5 A. Or anything that will keep them  
6 incarcerated, yes; but typically it is money that  
7 keeps them in jail, yes.

8 **Q. Okay. And -- but anything else?**

9 A. I think I'm thinking mostly about money at  
10 that point, yeah.

11 **Q. So you can't think of anything else but the**  
12 **money?**

13 A. That's usually the reason, yes.

14 **Q. But you don't have any statistics of -- on**  
15 **that?**

16 A. Not in regard to Galveston, no.

17 **Q. What do you base that on?**

18 A. My own experience and statistics in Harris  
19 County.

20 **Q. Is Harris County bigger than Galveston**  
21 **County?**

22 A. Yes.

23 **Q. Have you ever been to Galveston County?**

24 A. Yes.

25 **Q. Have you ever represented anyone in**

1 **Galveston County?**

2 A. In Federal court, not state courts.

3 **Q. So you don't know whether or not bail has**  
4 **increased or decreased in a bail review hearing in**  
5 **Galveston County?**

6 MR. MCCOLLUM: Objection, form.

7 A. I don't have personal knowledge, no.

8 **Q. (By Ms. Stafford) And then in paragraph 31**  
9 **you said: "Harris County tried a similar review of**  
10 **bail; and it was apparent that once an initial order**  
11 **for bail was entered, changing it later typically**  
12 **only resulted in higher bail."**

13 A. Right.

14 **Q. Where do you get that information?**

15 A. From my lawyers who represent people in  
16 those courts.

17 **Q. Any statistics on that?**

18 A. I can't give you numbers, no.

19 **Q. So it's from personal experience and**  
20 **experience of other public defenders?**

21 A. Yes, correct.

22 **Q. When did you guys try that similar review of**  
23 **bail?**

24 A. As I said, it still exists in misdemeanor  
25 courts, although it's much less necessary now because

1 so many are released initially. In felony courts it's  
2 really up to the lawyer to bring it to the court's  
3 attention.

4 Q. And you say that still exists in the  
5 misdemeanor courts. Is that the -- when an attorney  
6 files the lower bail -- notice of lower bail, or how  
7 does that work?

8 A. It's automatic unless they waive it.

9 Q. Okay.

10 A. And it's often waived.

11 Q. When you're saying it's automatic, who  
12 represents those defendants in that?

13 A. The lawyer that will be appointed for their  
14 entire case.

15 Q. Okay. And then you say: "When I reviewed  
16 the results, the total changes were less than  
17 5 percent of the cases."

18 A. Right.

19 Q. What results did you review?

20 A. That was a study that was done during  
21 O'Donnell. I don't know who -- I can't remember who  
22 did it.

23 Q. So you don't -- I see you don't have a  
24 article cited there?

25 A. No.

1 Q. Okay. The next sentence says: "It is basic  
2 human psychology that once something is decided, it's  
3 easier to let it stand than change it."

4 A. Yes.

5 Q. Are you a psychologist?

6 A. I do not have training.

7 Q. So what is your basis for that statement?

8 A. Experience.

9 Q. Experience, but not human psychology?

10 A. Judicial psych.

11 Q. That's a little different, right?

12 Why do you think it would be fairly  
13 simple for Galveston County to implement this  
14 system?

15 A. Because it's basically what you're doing  
16 with the bail review, if you would just move that up  
17 to the initial appearance and have the lawyer there.

18 Q. Do you know how often they have hearings in  
19 Galveston County?

20 A. I do not.

21 Q. So you're saying they would move to a  
22 24-hour system?

23 A. If they're holding court 24 hours, yes.

24 Q. Currently it's -- they have one in the  
25 morning and one in the evening?

1           A.     Right. And if they were to do that, then  
2 they would need a lawyer once in the morning and once  
3 in the evening.

4           **Q.     So you're saying it's workable if you're**  
5 **having a hearing in the morning and the evening?**

6           A.     Well, you only need lawyers for whenever  
7 you're going to have appearances. So, yeah. I mean,  
8 they would need to be there in advance of the  
9 appearances to meet the defendants and...

10          **Q.     How far in advance?**

11          A.     It wouldn't necessarily be long. As long as  
12 the defendant was available for the meeting and the  
13 information like the pretrial report or anything were  
14 available, it would be within minutes, half hour.

15                     That is similar to what I did in  
16 Federal courts. The magistrates -- Federal  
17 magistrates would often have a certain time every  
18 day that they do their docket. It usually would be  
19 like 2:00 in the afternoon. But the marshals might  
20 bring someone in at 1:00 o'clock, and I'd have to  
21 interview them. Or they could bring them in early  
22 in the morning. So a lot of what we do is dependent  
23 on how the system is moving. We're reactive to  
24 whatever the system provides.

25          **Q.     Do you think there should be a requirement**



1 that an attorney gets a certain amount of hours before  
2 a hearing to meet with their defendant?

3 A. No. There doesn't need to be a rule.

4 Q. Why not?

5 A. Because as long as you've had time to talk  
6 to them, that is sufficient. I mean, you're not  
7 bringing -- you're not doing an investigation. These  
8 hearings are not based on an investigation, they're  
9 not based on subpoenaing witnesses, they're not based  
10 on accumulating additional evidence. They are  
11 proffers. So we do the best we can with what  
12 information is available.

13 Q. So you think the Harris County system is one  
14 size fits all?

15 A. It's not one size fits all in that --  
16 because we have so many people and so many -- that is  
17 24 hours a day that that is a much bigger, faster  
18 system than most counties in Texas. But because  
19 smaller counties will have less people to deal with,  
20 they need less resources to make this work.

21 Q. Do you agree that there is a constitutional  
22 floor for what is provided by the law in the bail  
23 system?

24 A. There is a constitutional floor for  
25 everything in criminal procedure and criminal law,

1 yes.

2 **Q. And is Harris County providing more than**  
3 **what is constitutionally required?**

4 A. I believe they're providing exactly what the  
5 Constitution requires.

6 **Q. And you -- it says earlier in your**  
7 **declaration that you're a member of the Texas Indigent**  
8 **Defense Commission; is that correct?**

9 A. Yes.

10 **Q. And what do you do with them?**

11 A. Well, we meet quarterly. We implement  
12 policy about how counties provide indigent defense.  
13 We distribute grant funds in two ways. One is a  
14 proportion of the size of the county and their  
15 criminal appointments. And then the others are  
16 discretionary grants, which are like the ones that  
17 describe the DNA grant that Harris County got. So any  
18 county can apply for a grant for a specific purpose,  
19 and we decide whether or not they get them.

20 **Q. And you're part of that review process?**

21 A. Yes.

22 **Q. Did anyone from the Texas Indigent Defense**  
23 **Commission hook you up with the Texas ACLU attorneys?**

24 A. No.

25 **Q. So the phone call from Trisha was just**

1 completely out of the blue?

2 A. Yeah. I mean, as I said, she had reached  
3 out to me before on other issues but not bail.

4 MS. STAFFORD: I think that's all I have.  
5 Angie, do you have anything?

6 MS. OLALDE: Just one quick question.

7 EXAMINATION

8 BY MS. OLALDE:

9 Q. Mr. -- is it Mr. Bunin?

10 A. You got it right.

11 Q. Thank you. I was hoping to pronounce it  
12 right. My name is Angela Olalde, and I'm an attorney  
13 for the Galveston Criminal District Attorney.

14 A. Okay.

15 Q. Very quick. Looking at your affidavit,  
16 there is a spot in paragraph 26.

17 A. Okay.

18 Q. In the last sentence you say that basically  
19 having defense counsel at the initial appearance is  
20 well worth the cost and effort. Did I read that --  
21 did I summarize that correctly?

22 A. Yes.

23 Q. Can you tell me what -- so when you say well  
24 worth the cost and effort, can you state why or the  
25 basis for that statement, what you mean by that?

1           A.     Because the number of people that can be  
2     justifiably released and safely released because of  
3     the additional -- the addition of advocacy will reduce  
4     the cost of incarcerating them. It will help  
5     generally to reduce recidivism based on the study that  
6     they -- unnecessarily keeping people in jail will  
7     cause them to come back into the system. It will help  
8     them keep their jobs, help them stay in school. So  
9     all those things benefit the community at large. And  
10    so those are all benefits you get when you have a  
11    system that releases everyone that should be released.

12           **Q.     Is there anything else that you can think of**  
13    **that's important to the statement that it is well**  
14    **worth the cost and effort that you haven't just told**  
15    **me?**

16           A.     I'm sure there are all kinds of collateral  
17    benefits that I can't think of, but those are the main  
18    ones.

19           **Q.     Yeah. Because if it were important, you**  
20    **would remember and you would tell me now, right?**

21                   MR. MCCOLLUM: Objection to form.

22           A.     There are -- I mean, I could -- I could  
23    think of other things. So one of the benefits is that  
24    a defendant who is released can assist in their own  
25    defense, and that makes the system fairer. Another

1 benefit is that they can, you know, assist their  
2 family, provide for their loved ones. It's -- again,  
3 it's -- when people are unjustifiably and  
4 unnecessarily kept in custody, there are costs to  
5 society and costs to those defendants. And these  
6 things are remedied when everyone who can get out,  
7 should get out and no one should stay in just because  
8 they're poor.

9 **Q. (By Ms. Olalde) And the reduction in**  
10 **recidivism that you cited is based on studies that**  
11 **are quoted in your affidavit; is that correct?**

12 A. Yes. That's the one that I can think of  
13 most readily, yes.

14 **Q. But you're not basing them only on**  
15 **statistics that you have compiled in your --**

16 A. I'm not a social researcher, no.

17 MS. OLALDE: No further questions at this  
18 time. Thank you, Mr. Bunin.

19 THE WITNESS: You're welcome.

20 MR. MCCOLLUM: Nothing.

21 (Deposition concluded 11:40 a.m.)  
22  
23  
24  
25

1 CHANGES AND SIGNATURE

2 WITNESS NAME: ALEXANDER BUNIN

3 DATE OF DEPOSITION: March 19, 2019

4 PAGE LINE CHANGE REASON

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

1  
2 I, \_\_\_\_\_, do hereby certify that I  
3 have read the foregoing pages, and that the same is a  
4 correct transcription of the answers given by me to the  
5 questions therein propounded, except for the corrections  
6 or changes in form or substance, if any, noted in the  
7 attached Errata Sheet.

8  
9 \_\_\_\_\_  
10 WITNESS SIGNATURE DATE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

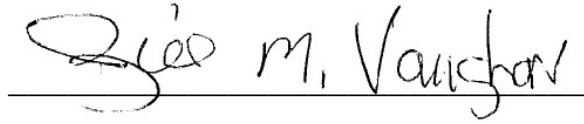




1 outcome of this action.

2 Certified to by me on this 27th day of

3 March, 2019.

4 

5 Jill M. Vaughan, CSR, RPR  
6 CSR No. 6192  
7 Expiration date: 12-31-19  
8 Integrity Legal Support Solutions  
9 Firm No. 528  
3100 West Slaughter Lane  
Suite 101  
Austin, TX 78748  
512-320-8690

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25